



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 7950-99

13 April 2000

MR [REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 12 April 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by Headquarters Marine Corps, dated 14 March 2000, a copy of which is attached. The also considered your counsel's letter dated 3 April 2000 with enclosure.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. They were unable to find that you were not afforded your right to cross examine witnesses against you, noting that the report of the competency review board (CRB) proceedings indicated that you exercised that right. They could not accept your unsupported assertion, in your affidavit of 29 March 2000, that "any reference [in the CRB report] to my questioning the Board's witnesses is false." Since they did not find the results of your CRB should be reversed, they had no grounds to remove documentation of the CRB, give you a chance to return to the Marine Corps, or give you three months of administrative credit and allow you to apply for early retirement. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is

important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosure

Copy to:  
Vaughan E. Taylor, Esq.



7950-99

DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
2 NAVY ANNEX  
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:

1070

JAM3

14 MAR 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION  
IN THE CASE OF FORMER STAFF SERGEANT [REDACTED]  
[REDACTED] U.S. MARINE CORPS

1. We are asked to provide an opinion on Petitioner's request that BCNR set aside the findings and conclusions of the Competency Review Board (CRB) conducted on 19 August 1994. We recommend the request be denied. Our analysis follows.

2. Background

a. In March 1994, Petitioner, an instructor at the Food Service School at Camp Lejeune, NC, was accused of sexual harassment by a female student. Following an investigation into the allegation, Petitioner received a nonpunitive letter of caution. Later that same month, Petitioner was accused of kissing another female student. Petitioner admitted this incident and in May 1994, Petitioner was charged with disobeying a lawful order and fraternization, in violation of Articles 92 and 134 of the Uniform Code of Military Justice (UCMJ). The charges were referred to a special court-martial for disposition and a trial date of 30 August was scheduled.

b. On 11 August 1999, the Commanding Officer, Marine Corps Service Support Schools, Marine Corps Base, Camp Lejeune, convened a Competency Review Board (CRB) to review Petitioner's qualifications for continued service as a Staff Sergeant. The charges previously referred to a special court-martial were also withdrawn and dismissed. On 19 August 1994 the CRB concluded that Petitioner's conduct in dealing with the students was professionally deficient and recommended that the Petitioner be reduced one paygrade. On 6 March 1995 the Commanding General, Marine Corps Base, Camp Lejeune reduced Petitioner to the rank of Sergeant.

3. Analysis. Petitioner contends that the command decision to handle his case at a CRB, rather than through a court-martial, deprived him of due process of law. He also challenges the correctness of the CRB findings. Petitioner's argument is without merit. Petitioner has no right to insist that the allegations against him be resolved through trial by court-

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION  
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[REDACTED] MARINE CORPS

martial. His command could legally, and logically, decide that the allegations did not warrant prosecution but did call into question Petitioner's suitability for continued service as a Staff NCO. The question then becomes whether Petitioner received the process that was due him before the CRB that was convened to review his qualifications. The record of the CRB is correct in form and suggests no irregularity in the proceeding itself. Petitioner was informed of his rights, consulted with counsel, and had the opportunity to exercise his rights at the proceeding. Petitioner presents no evidence indicating that he did not receive the process promised him by applicable regulations, and that is all the process he was due.

4. Conclusion. We recommend that the requested relief be denied.

[REDACTED]  
[REDACTED]  
Assistant Head  
Military Law Branch  
Judge Advocate Division